

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LAWRENCE M. BECKER,

Plaintiff,

v.

CARMEN STEPHANIE MAYS-  
WILLIAMS and ASA WILLIAMS JR.,

Defendants.

CASE NO. C11-5830 BHS

DECISION, FINDINGS OF FACT,  
AND CONCLUSIONS OF LAW

This matter comes before the Court on a bench trial conducted on January 19, 2016. Having considered the testimony of the witnesses at trial, the exhibits admitted into evidence at trial, the parties' post-trial briefs, and the reminder of the file herein, the Court enters the following decision, findings of fact, and conclusions of law.

**I. DECISION SUMMARY**

The Court has been called upon to resolve a dispute between Asa Williams Sr.'s ("Asa Sr.") son, Asa Williams Jr. ("Asa Jr."), and Asa Sr.'s former wife, Carmen Stephanie Mays-Williams ("Carmen"). The question before the Court is whether Asa Jr. or Carmen is the legal beneficiary to benefits Asa Sr. earned through his employment with Xerox Corporation ("Xerox"). These benefits consist of the Xerox Retirement

Income Guarantee Plan (“RIGP”) and the Xerox Savings Plan (“Savings Plan”) (collectively “the Plans”), both of which are subject to the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.* The dispute began in this Court through an interpleader action initiated by Lawrence Becker, the fiduciary of the Plans.

#### A. Legal Framework

To resolve this dispute, the Court first looks to the guidance provided by the Ninth Circuit in *Becker v. Williams*, 777 F.3d 1035 (9th Cir. 2015). The panel remanded for the Court to determine whether Asa Sr. “strictly or substantially complied with the governing plan documents.” *Id.* at 1041. The panel further explained that this inquiry was governed by state law, and implicated Asa Sr.’s intentions. *Id.*

The panel concluded that the plan administrator, by filing this interpleader action, had not been able to determine whether Asa Sr. complied with the governing plan documents:

[R]ather than award benefits to Carmen due to Asa, Senior’s alleged failure to return the signed beneficiary forms, the plan administrator declined to award benefits to either party, and instead chose to file this present interpleader action. Thus the plan administrator impliedly *declined* to exercise any discretion in determining whether Asa, Senior’s telephonic designation of Asa, Junior, as beneficiary was valid under the plan. . . .

Thus, as there has been no exercise of discretion to which we could defer, we review *de novo* whether Carmen or Asa, Junior, is entitled to plan benefits—a question answered by reference to the governing plan documents. *See Thomas v. Or. Fruit Prods. Co.*, 228 F.3d 991, 993 (9th Cir. 2000); *see also Liberty Life*, 358 F.3d at 1299 (applying *de novo* review when the plan administrator declined to exercise its discretionary authority to interpret benefit eligibility).

The inquiry thus is whether Asa, Senior, strictly or substantially complied with the governing plan documents. *See BankAmerica Pension*

1        *Plan v. McMath*, 206 F. 3d 821, 830 (9th Cir. 2000). Such an inquiry is one  
2        of state law, *see id.*, and one that implicates Asa, Senior’s intentions, *see*,  
3        *e.g.*, *Sun Life Assurance Co. of Canada v. Sutter*, 95 P.2d 1014, 1016  
4        (Wash. 1939) (“[I]n cases in which the insurer is not interested, the intent  
5        of the insured is entitle to great consideration”).

6        *Id.*

7        Throughout this litigation, Asa Jr. has held steadfast to his position that Asa Sr.  
8        strictly complied with the plan documents because the Ninth Circuit held that “the  
9        governing plan documents permit unmarried participants to change their beneficiary  
10        designations by telephone.” *Id.* The Court agrees with Asa Jr. to the extent that  
11        telephone calls may be permitted because the governing plan documents provide that Asa  
12        Sr. may change his beneficiary. *See* Trial Ex. A-1 § 7.4 (“An unmarried  
13        Member . . . may change his designation of beneficiary from time to time.”); Trial Ex. A-  
14        2 § 10.01 (“An unmarried Participant . . . may change his designation of beneficiary from  
15        time to time.”).

16        The Plans, however, fail to provide any mechanism for *how* such a change may or  
17        should be made. Put another way, the governing plan documents are so equivocal that  
18        unmarried participants could change their beneficiaries by email, carrier pigeon,  
19        messages in a bottle, or any other form of communication. *Riordan v. Commonwealth*  
20        *Edison Co.*, 128 F.3d 549, 552 (7th Cir. 1997) (“In circumstances where a plan provides  
21        liberal mechanisms for changing beneficiaries . . . , ‘strict’ enforcement means allowing  
22        participants to do exactly that.”). Thus, the problem with Asa Jr.’s position is not the  
23        type of communication, but rather the *lack* of any clear and unequivocal communication,  
24        as more thoroughly explained below.

1 In the absence of strict compliance, Washington courts follow the guidance set  
2 forth by the Washington Supreme Court in *Williams v. Bank of California, N.A.*, 96  
3 Wn.2d 860, 866 (1982):

4 The rule requiring substantial compliance with the policy terms in  
5 effectuating a change of beneficiary becomes necessary for the purpose of  
6 demonstrating with a high degree of certainty that the deceased insured  
7 unequivocally desired to make that change, and that he did not some time  
8 thereafter abandon his purpose by failing to take affirmative steps to carry  
9 out his intent.

10 Substantial compliance is therefore the appropriate standard for this case. In  
11 Washington, “[s]ubstantial compliance with the terms of the policy means that the  
12 insured has not only manifested an intent to change beneficiaries, but has done everything  
13 which was reasonably possible to make that change.” *Allen v. Abrahamson*, 12 Wn. App.  
14 103, 105 (1974).

15 It is within this legal framework that the Court considers the evidence presented at  
16 trial.

#### 17 **B. Evidence at Trial**

18 During trial, Asa Jr. presented documentary evidence and witness testimony  
19 through cross-examination to support his contention that Asa Sr. either strictly or  
20 substantially complied with the term of the plans. Asa Jr. failed to meet his burden for  
21 several reasons.

22 First, Asa Jr. failed to establish that Asa Sr. was the individual who called Xerox  
to change the beneficiary designation. It is undisputed that someone called Xerox, but  
Asa Jr. failed to sufficiently establish that Asa Sr. was the caller. For example, Asa Jr.

1 did not submit evidence to establish the phone number of the individual that called  
2 Xerox. Without additional supporting evidence, the Court cannot assume that simply  
3 because calls were made by someone purporting to be Asa Sr. that those calls were  
4 actually made by Asa Sr. In today's world, we see the nearly ubiquitous use of security  
5 measures—such as codes and personal identifying information—to avoid fraudulent  
6 transactions. Based on the evidence presented at trial, it is unclear whether Xerox  
7 consistently employed such measures in this case. In fact, Xerox's internal notes from  
8 the contact in July 2007 show that Asa Sr. did not have a username or password to update  
9 his beneficiary online. *See* Trial Ex. A-11. With or without the use of identifying  
10 information over the phone, it is reasonable for Xerox to require written verification of  
11 the designation change to avoid fraudulent transactions.

12       Second, after each of the three phone calls, Xerox sent Asa Sr. an authorization  
13 form, asking Asa Sr. to “validate” the beneficiary change requested in the phone call.  
14 Trial Exs. 13, 14, 18, 19. With regard to the first two times the forms were sent, Asa Sr.  
15 did not sign, date, and return the forms. As for the third time, the forms were returned  
16 unsigned and/or undated. Trial Exs. 20, 21. Xerox subsequently sent Asa Sr. two letters  
17 on February 1, 2011. Trial Exs. 20, 21. The letters informed Asa Sr. that he failed to  
18 sign and/or date the authorization forms, and therefore his beneficiary designation could  
19 not be considered valid. Trial Exs. 20, 21. The letters further informed him that if a new  
20 authorization form was not signed, dated, and returned, the beneficiary change would not  
21 be considered valid. Trial Exs. 20, 21. Asa Sr. did not return any document after the  
22 February 1, 2011 letters. He died on May 16, 2011. The Court is unable to find that Asa

1 Sr.'s repeated failure to return a properly completed authorization form was anything but  
2 the product of an intentional and conscious decision.

3       When confronted with the fact-specific inquiry of determining a deceased's intent,  
4 the failure to complete simple, mundane tasks undermines Asa Sr.'s alleged unequivocal  
5 desire to change his beneficiary. Even if it was established that Asa Sr. at some point  
6 expressed a desire to change his beneficiary, the very fact that he allegedly called three  
7 times, was told to sign and return an authorization form three times, and failed to return a  
8 properly completed authorization form three times, is compelling evidence that Asa Sr.  
9 ultimately did not want to change his beneficiary. Indeed, under the circumstances  
10 presented in this case, it is just as reasonable—if not more reasonable—to conclude that  
11 Asa Sr. did not make the calls as it is to conclude that he did. It is also just as reasonable  
12 to infer that even if Asa Sr. was the caller, his failure to return a signed authorization  
13 form demonstrates that he did not, in fact, wish to change his beneficiary. While the last  
14 alleged attempt to change the beneficiary resulted in a partially completed and returned  
15 authorization form, the fact that the form was unsigned leads to as reasonable an  
16 inference that someone other than Asa Sr. mailed it as it is to infer that Asa Sr. did. No  
17 evidence was presented as to why Asa Sr. failed to comply with the plan administrator's  
18 directives when Asa Sr. did not die for more than three months after he was reminded by  
19 Xerox what he must do to effectuate the beneficiary change.

20       Third, substantial and credible evidence was presented showing that Asa Sr. would  
21 not have made the alleged change of removing Carmen in favor of Asa Jr. The  
22

1 uncontroverted evidence the Court accepts as credible and proven consists of the  
2 following:

- 3 1. Carmen provided health care assistance to Asa Sr. and was  
4 instrumental in getting him into a kidney transplant program, which  
5 helped him live for several more years.
- 6 2. Carmen and Asa Sr. had a good relationship after their divorce in  
7 2007 and during his final years.
- 8 3. During the time of the alleged beneficiary designation, Carmen was  
9 still raising and supporting Asa Sr.'s two nephews that he and  
10 Carmen had adopted.
- 11 4. Asa Sr. had an egalitarian view toward parenting his nine children,  
12 which would be inconsistent with Asa Sr. designating only one of  
13 his children as his beneficiary under the Plans.
- 14 5. Asa Sr. named all nine children in his Last Will and Testament.
- 15 6. Asa Sr. and Asa Jr. had an estranged relationship during much of the  
16 post-divorce period. Even in 2004—when Asa Sr. had been  
17 hospitalized and close to death in North Carolina—Asa Jr., having  
18 been informed that his father was very ill, did not contact him.
- 19 7. In 2001, Asa Jr. and Asa Sr. had an altercation in which Asa Sr. was  
20 injured and had to go to the hospital. Although counsel for Asa Jr.  
21 attempted to impeach Carmen's testimony by suggesting she was  
22 unable to observe Asa Jr. as the aggressor, the Court finds that she  
heard the altercation, she was called to come by Asa Sr. to the  
garage, and she went into the garage and saw Asa Sr. on the floor  
bleeding while Asa Jr. fled the scene. During Carmen's marriage to  
Asa Sr., Asa Jr. never came to the home after that altercation. The  
only conversation Asa Jr. had with Carmen after the altercation was  
the call she made to him in 2004, in which she asked Asa Jr. to come  
see his father who was not expected to live much longer.

20 Apart from the evidence of the purported but unsubstantiated calls by Asa Sr. to  
21 Xerox, the returned but unsigned and/or undated authorization form, and the divorce  
22 proceedings, the only other evidence presented by Asa Jr. was the July 2007 divorce

1 decree that awarded the Plans to Asa Sr. *See* Trial Ex. 12. The divorce decree, however,  
2 is not dispositive. First, the divorce decree was not a Qualified Domestic Relations Order  
3 (“QDRO”), and therefore is not controlling. *See Kennedy v. Plan Adm’r for DuPont Sav.*  
4 *& Inv. Plan*, 555 U.S. 285 (2009). Second, even though Asa Sr.’s attorney notified Asa  
5 Sr. about the importance of removing Carmen as his beneficiary as soon as possible after  
6 the divorce, Trial Ex. A-14, Asa Sr. did not sign, date, and return the three sets of  
7 authorization forms. Finally, in the years following the divorce, Carmen and Asa Sr. had  
8 an ongoing positive relationship.

9 As argued by Carmen, there is no evidence that Asa Sr. ever contested or  
10 questioned Xerox’s requirement that he must sign, date, and return the authorization form  
11 in order to effectuate the beneficiary change. It is more likely than not that Asa Sr.  
12 believed that by not doing so his beneficiary designation would remain unchanged.

13 Suppose, on the other hand, the Court was required to ignore all of this evidence,  
14 as urged by Asa Jr., and look only to the phone calls allegedly made by Asa Sr. Assume  
15 also that after making these calls and being told that in order to effectuate his intent, Asa  
16 Sr. was required to sign, date, and return an authorization form. Also assume there was a  
17 written reminder that the returned form was undated and/or unsigned, and therefore  
18 invalid. Finally, assume Asa Sr. reasonably relied upon these directions and, having  
19 changed his mind, rested in the assurance that his beneficiary would remain unchanged.  
20 Under all these assumptions, it is not a just result that Asa Sr.’s prior direction be  
21 thwarted by equivocal intentions. In other words, Asa Sr.’s repeated failures over the  
22



1 course of four years evidences an intent *not* to fully and finally change his beneficiary  
2 designations.

3 Ultimately, Asa Jr. has failed to meet his burden of proving that Asa Sr. strictly or  
4 substantially complied with the governing plan documents in order to change the  
5 beneficiary of the Plans. Asa Jr. has not proven that Asa Sr. unequivocally manifested an  
6 intent to change his beneficiary nor proven that Asa Sr. did all that was reasonably  
7 possible to do to effectuate a change. Therefore, the designation naming Carmen controls  
8 and she is entitled to be paid the benefits.

9 In addition to the forgoing, the Court makes the following findings of facts and  
10 conclusions.

## 11 **II. FINDINGS OF FACT**

12 1. Asa Sr. and Carmen knew each other for many years before they married in  
13 1993. Asa Sr. had a significant alcohol problem before they married, and Carmen helped  
14 Asa Sr. obtain treatment for his alcohol addiction. By the time they married, Asa Sr. had  
15 successfully completed alcohol treatment.

16 2. When Asa Sr. married Carmen in 1993, he designated her as the beneficiary  
17 of the Plans by signing, dating, and returning a form to Xerox. Trial Ex. A-8.

18 3. Asa Sr. and Carmen had a large blended family of nine children. Asa loved  
19 all of his children equally. Asa Sr. named all nine children in his Last Will and  
20 Testament, which was prepared in June 2000. Trial Ex. A-4.

21 4. In 2000, Asa Sr. and Carmen lived in Sacramento, California. That year,  
22 Asa Sr. learned he had advanced Hepatitis C. In January 2001, Asa Sr. learned he had

1 liver cancer, which was inoperable and would soon be fatal. Carmen researched liver  
2 transplant programs in the United States, and helped convince a program at the  
3 University of North Carolina to accept Asa Sr. As a condition of being accepted into the  
4 program, Asa Sr. had to move to North Carolina.

5         5. In February 2001, Asa Jr. visited Asa Sr. and Carmen's home for the first  
6 time since they were married. The visit went poorly and culminated with Asa Jr.  
7 punching Asa Sr. in the face, causing significant injury to Asa Sr. and a trip to the  
8 emergency room for stitches. The February 2001 visit was the last time that Asa Jr.  
9 visited Asa Sr. and Carmen at their home.

10         6. In April 2002, Asa Sr. and Carmen moved from California to North  
11 Carolina so that Asa Sr. could receive a liver transplant at the University of North  
12 Carolina.

13         7. In May 2003, Asa Sr. had the liver transplant. Following the transplant,  
14 Asa Sr. suffered from kidney failure and continued to have significant medical  
15 challenges. He remained on kidney dialysis for the rest of his life. Carmen took care of  
16 Asa Sr. and supported his recovery.

17         8. In October 2004, Asa Sr. retired from Xerox.

18         9. In 2005, Asa Sr. moved to Vancouver, Washington.

19         10. Carmen filed for divorce in North Carolina.

20         11. In 2007, Asa Sr. and Carmen agreed to dismiss the first divorce proceeding  
21 and file a new proceeding that would not be contested by either of them. As they agreed,  
22

1 Asa Sr. filed a new divorce proceeding in April 2007. Trial Ex. 12. Carmen did not  
2 appear. *Id.*

3 12. Asa Sr. and Carmen's divorce was finalized in July 2007. *Id.* Their  
4 divorce decree did not provide for any property settlement, *see id.*, and was not a QDRO.

5 13. Having worked with Asa Sr. during the divorce proceeding, it was  
6 Carmen's impression that he was grateful she had worked to find a liver transplant  
7 program for him, she had taken good care of him, and she was continuing to raise their  
8 two adopted sons, even if he was not. It was also Carmen's impression that Asa Sr.  
9 intended for her to remain the beneficiary of the Plans based on their history together and  
10 shared egalitarian views towards their nine children.

11 14. After their divorce in July 2007, Asa Sr. and Carmen regained their  
12 friendship and maintained a cordial, congenial, and respectful relationship as they worked  
13 together to raise their two nephews, who Asa Sr. and Carmen had adopted and who  
14 remained in Carmen's custody. Asa Sr. and Carmen frequently talked on the phone and  
15 were in regular communication. Their communications were pleasant and friendly. They  
16 cared about each other and the divorce did not change that.

17 15. Both before and after the divorce, Asa Sr. regularly received mail at his  
18 home in Vancouver, Washington. He regularly responded and signed documents as  
19 requested, including requests from his attorney.

20 16. On July 16, 2007, after the divorce was final, Asa Sr.'s attorney contacted  
21 Xerox about changing Asa Sr.'s beneficiary. Trial Ex. A-14. Asa Sr.'s attorney asked a  
22

1 Xerox representative to contact Asa Sr. about how to proceed with changing the  
2 beneficiary on his retirement account. *Id.*

3 17. Asa Sr.'s attorney also sent a letter to Asa Sr. at his home in Vancouver,  
4 Washington. *Id.* The letter notified Asa Sr. that Xerox would contact him about how to  
5 change his beneficiary. *Id.* The letter also advised Asa Sr. about the importance of  
6 removing Carmen as his beneficiary as soon as possible. *Id.*

7 18. On July 17, 2007, a Xerox representative called Asa Sr. Trial Ex. A-11.  
8 Because Asa Sr. did not have a username or password to update his beneficiary online,  
9 Asa Sr. needed to change his security information and then call Xerox back. *Id.*

10 19. Two hours later, an individual purporting to be Asa Sr. called Xerox about  
11 changing his beneficiary of the RIGP. *Id.* The Xerox representative informed the caller  
12 that he needed to sign, date, and return an authorization form to complete the beneficiary  
13 change. *Id.*

14 20. On July 18, 2007, Xerox sent a beneficiary authorization form to Asa Sr.'s  
15 home in Vancouver, Washington. Trial Ex. 13. The form states that Asa Sr. must sign,  
16 date, and return the form in order to validate his beneficiary designation. *Id.* The parties  
17 do not contest whether Asa Sr. received this form.

18 21. Asa Sr. did not sign, date, or return the beneficiary authorization form, and  
19 Xerox did not change Asa Sr.'s beneficiary designation.

20 22. On February 29, 2008, an individual purporting to be Asa Sr. called Xerox  
21 and asked to change his beneficiary of the RIGP to Asa Jr. *See* Trial Ex. 14.  
22

1       23.    On March 3, 2008, Xerox sent a beneficiary authorization form to Asa Sr.'s  
2 home in Vancouver, Washington. *Id.* The form states that Asa Sr. must sign, date, and  
3 return the form in order to validate his beneficiary designation. *Id.* The parties do not  
4 contest whether Asa Sr. received this form.

5       24.    Asa Sr. did not sign, date, or return the beneficiary authorization form, and  
6 Xerox did not change Asa Sr.'s beneficiary designation.

7       25.    On January 10, 2011, an individual purporting to be Asa Sr. called the  
8 Xerox Benefits Center and stated he wanted Asa Jr. to be listed as his beneficiary of the  
9 Plans. *See* Trial Ex. 15.

10       26.    During the phone call, the Xerox representative acknowledged that Asa Sr.  
11 and Carmen were no longer married and informed the caller that he needed to sign and  
12 return two authorization forms. *Id.* The caller did not contest or question the instruction  
13 that the forms needed to be signed and returned. *Id.*

14       27.    On January 11, 2011, Xerox mailed two beneficiary authorization forms to  
15 Asa Sr. Trial Exs. 18, 19. The parties do not contest whether Asa Sr. received these  
16 forms.

17       28.    The forms were returned to Xerox unsigned and/or undated, and Xerox did  
18 not change Asa Sr.'s beneficiary designation. Trial Exs. 20, 21.

19       29.    On February 1, 2011, Xerox mailed two letters to Asa Sr. Trial Exs. 20, 21.  
20 The letters notified Asa Sr. that his beneficiary designations "cannot be considered valid"  
21 until he signed, dated, and returned the authorization forms. Trial Exs. 20, 21. The  
22 parties do not contest whether Asa Sr. received these letters.

1       30. Asa Sr. did not respond to the letters.

2       31. No persuasive evidence was presented that the caller to the Xerox Benefits  
3 Center was Asa Sr.

4       32. Asa Sr. was repeatedly informed that he must sign, date, and return the  
5 authorization forms in order to complete a change of beneficiary. Although these forms  
6 are not governing plan documents, Asa Sr.'s repeated failure to complete the simple task  
7 of signing and returning the forms demonstrates that it was not Asa Sr.'s unequivocal  
8 desire to change his beneficiary.

9       33. The unrefuted testimony of Andrea Elliott, coupled with the distribution set  
10 forth in Asa Sr.'s will, credibly establishes that Asa Sr. would not have preferred one  
11 child (Asa Jr.) over his eight other children in selecting a beneficiary for the Plans.

12       34. Asa Sr. died on May 16, 2011, in Vancouver, Washington.

### 13                               **III. CONCLUSIONS OF LAW**

14       1. The Court has jurisdiction under 29 U.S.C. § 1132(e) and 28 U.S.C. § 1331.

15       2. This is an interpleader action. Interpleader actions “developed in equity  
16 and [are] governed by equitable principles.” *Aetna Life Ins. Co. v. Bayona*, 223 F.3d  
17 1030, 1033–34 (9th Cir. 2000).

18       3. The Plans are “employee benefit plans” under ERISA. 29 U.S.C.  
19 § 1002(3).

20       4. Asa Sr. was a “participant” of the Plans. *Id.* § 1002(7).

21       5. The Plans provide that an unmarried participant “may change his  
22 designation of beneficiary from time to time.” Trial Ex. A-1 § 7.4; *see also* Trial Ex. A-2

1 § 10.01. Neither the RIGP nor the Savings Plan contains specific requirements as to how  
2 an unmarried participant, such as Asa Sr., may change his beneficiary.

3 6. Although the Summary Plan Documents (“SPDs”) state that unmarried  
4 participants may call the Xerox Benefits Center to change their beneficiary designation at  
5 any time, Trial Exs. A-1 & A-2, the SPDs are not governing plan documents. *See CIGNA*  
6 *Corp. v. Amara*, 563 U.S. 421, 438 (2011) (“[T]he summary documents, important as  
7 they are, provide communication with beneficiaries *about* the plan, but . . . their  
8 statements do not themselves constitute the *terms*.”). Thus, the statements in the SPDs do  
9 not constitute the terms of the Plans.

10 7. The plan administrator declined to exercise any discretion in determining  
11 the beneficiary of the Plans, and instead filed this interpleader action.

12 8. Under the doctrine of strict compliance, Asa Sr. could change his  
13 beneficiary designation from time to time. *Riordan*, 128 F.3d at 552. Asa Jr., however,  
14 failed to submit sufficient evidence to establish that Asa Sr. communicated a change of  
15 beneficiary to Xerox. Therefore, the Court concludes that Asa Sr. did not strictly comply  
16 with the liberal terms of the Plans.

17 9. In the absence of strict compliance, the Court must assess whether Asa Sr.  
18 substantially complied with the terms of the Plans. *Becker*, 777 F.3d at 1041.

19 10. Substantial compliance is determined by the law of the forum state.  
20 *BankAmerica Pension Plan v. McMath*, 206 F.3d 821, 829–830 (9th Cir. 2000) (applying  
21 California law). In Washington, “[s]ubstantial compliance with the terms of the policy  
22 means that the insured has not only manifested an intent to change beneficiaries, but has

1 done everything which was reasonably possible to make that change.” *Allen*, 12 Wn.  
2 App. at 105.

3 11. Asa Sr. and Carmen’s 2007 divorce decree did not change the designation  
4 of Carmen as the beneficiary of the Plans. *See Kennedy*, 555 U.S. 285. The divorce  
5 decree was not a QDRO. Thus, any orders entered in the parties’ divorce proceedings do  
6 not in and of themselves remove Carmen as the designated beneficiary of the Plans or  
7 otherwise demonstrate intent one way or the other.

8 12. Asa Jr. has failed to establish that Asa Sr. manifested intent to change his  
9 beneficiary and did everything reasonably possible to effect that intent.

10 13. Carmen is entitled to an order from this Court requiring Xerox to pay  
11 Carmen or her designee all proceeds of Asa Sr.’s RIGP and Savings Plan without further  
12 delay.

13 14. Attorney’s fees and costs shall not be awarded to either party. The Court,  
14 however, will consider a motion from Carmen’s counsel regarding the manner in which  
15 the proceeds should be distributed in light of possible tax implications or similar  
16 considerations.

17 Dated this 8th day of March, 2016.

18  
19 

20 BENJAMIN H. SETTLE  
21 United States District Judge  
22